IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

**THE HONOURABLE MR. JUSTICE K.T.SANKARAN**

WEDNESDAY, THE 24TH JANUARY 2007 / 4TH MAGHA 1928

**WP(C).No. 1975 of 2007(I)**

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PETITIONER:
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K.V.RAVEENDRAN, S/O.CHATHUKUTTY NAMBIAR,
RESIDING AT ARAMANGANAM, ULOOJI, KALANAD P.O.
KASARAGOD DISTRICT, NOW RESIDING AT .H.NO.20, KALLATRA
QUARTERS, RAILWAY STATION ROAD, KOTTACHERRY,
KANHANGAD - 671 315.

BY ADV. SRI.M.GOPIKRISHNAN NAMBIAR
ADV. SRI.IMTHIYAZ AHAMED
ADV. SRI.SHIRAZ ABDULLA

RESPONDENTS:
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1. THE SPECIAL TAHSILDAR,(LA),
RAILWAY, KASARAGOD.

2. THE DISTRICT COLLECTOR,
COLLETORATE, KASARAGOD.

3. THE DEPUTY CHIEF ENGINEER(CONSTRUCTION),
SOUTHERN RAILWAY, KANNUR.

R1 & R2 BY GOVERNMENT PLEADER SHRI L.G. SURESH BABU.
R3 BY ADV. SRI. ALEXANDER THOMAS, SC,RAILWAYS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

## APPENDIX

**PETITIONER'S EXHIBITS:**

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|---|---|---|
| Ext. P1 | : | TRUE PHOTOCOPY OF THE PETITION FILED UNDER SECTION 28A BEFORE THE 1ST RESPONDENT DATED 28.02.2005. |
| Ext. P2 | : | TRUE PHOTOCOPY OF THE ACKNOWLEDGEMENT DATED 01.03.2005. |
| Ext. P3 | : | TRUE COPY OF THE JUDGMENT IN W.P.(C) 9508/06 DATED 29.03.2006. |
| Ext. P4 | : | TRUE COPY OF THE ORDER DATED 02.08.2006 PASSED BY THE 1ST RESPONDENT. |

/true copy/

P.A. TO JUDGE

**K.T. SANKARAN, J.**

**.....**

**W.P.(C) No. 1975 OF 2007**

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**Dated this the 24th January, 2007**

**J U D G M E N T**

The petitioner submitted Ext. P1 application before the first respondent under section 28A of the Land Acquisition Act. The application was filed when the land value was enhanced in LAR Nos. 32, 59 and 62 of 2001 as per the judgment dated 29.11.2004. A certified copy of the judgment in LAR Nos. 32,59 and 62 of 2001 was also produced along with the application. The application was filed within time.

2. By Ext. P4 order, the first respondent rejected Ext.P1 application on the ground that as against the judgment in LAR No. 59 of 2001, LAA No. 1501 of 2005 is pending before the High Court . It is also stated that a proposal was already sent for the purpose of filing appeals against the judgment in LAR.Nos. 32 and 62 of 2001. It was held by the first respondent that no application under section 28A shall be entertained when land acquisition appeal is pending before a court. Another ground

stated by the first respondent in Ext.P4 for rejecting the application is the following:

> *"In this case, the application under section. 28A filed by the applicant and certified copy of judgment applied by the Advocate in LAR 78/01 is without vakalath."*

3. The grounds stated in Ext. P4 order for rejecting the application are unsustainable. In **K.M. Abdul Rahiman and others vs. The Special Tahsildar and others** ( **W.P.(C) 2073 of 2007**), it was held as follows:

> *"If an application under section 28A were to be rejected on the ground that appeal is pending against the decision of the reference court, the applicant would have to make a constant watch of the proceedings before the appellate forum and file the application again after disposal of the appeal. This is not what is contemplated under section 28A of the Act. Section 28A confers a right on the person whose land was acquired to get re-determination of compensation on the basis of the compensation awarded to the other land owners, provided the ingredients of Section 28A are satisfied. To direct such a person to keep waiting and to make constant watch of the proceedings before the appellate forum, would be against the letter and spirit of Section 28A. An application under section 28A has to be filed within the period of limitation. Once the application is filed within the period of limitation, it is liable to be disposed of on the merits. If an appeal against the award of the reference court is pending, that is a good ground for not disposing of the application filed under section 28A. But that is not a*

> *ground for rejecting the application.. Once the application is rejected, how could the Land Acquisition Officer dispose of the same after the appeal is disposed of? After disposal of the appeal, could he revive an application which was rejected by him finally? Evidently, he cannot do so. A claimant under section 28A is not expected to make a second application after the disposal of the appeal. Therefore, the only safe and proper course to be adopted is to keep the application under section 28A pending till the disposal of the appeal and thereafter to dispose of the application on the merits. Ext. P6 order to the extent to which the Land Acquisition Officer rejected the application on the ground that an appeal is pending, is therefore erroneous. "*

Therefore the rejection of the application on the ground that an appeal is pending, is erroneous. The second ground by which the application is rejected is also unsustainable. In W.P.(C) 2073 of 2007, it was held that there is no requirement in law that the certified copy of the judgment should have been obtained after engaging an advocate. Learned counsel for the petitioner produced before me a certified copy of the judgment in L.A.R.No. 32 of 2001 and connected matters and pointed out that L.A.R.No. 78 of 2001 was also disposed of along with L.A.R.No. 32 of 2001. The fact that the certified copy was applied for by the advocate appearing in L.A.R.No.78 of 2001 is not at all a reason for rejecting the

application.

4. For the aforesaid reasons, Ext.P4 order is set aside. The first respondent shall take Ext.P4 on file and keep the same pending till the disposal of the appeal from the Land Acquisition Reference case, on the basis of which the application under section 28A was made. The 1st respondent shall dispose of Exhibit. P1 application after the appeal is disposed of.

Writ Petition is allowed as above.

**K.T. SANKARAN,**
**JUDGE.**

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